

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7160

BILL NUMBER: HB 1360

NOTE PREPARED: Apr 9, 2009

BILL AMENDED: Apr 9, 2009

SUBJECT: State Energy Policy

FIRST AUTHOR: Rep. Battles

FIRST SPONSOR: Sen. Gard

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: ☒ **GENERAL**
☐ **DEDICATED**
☐ **FEDERAL**

IMPACT: State

Summary of Legislation: (Amended) This bill requires the Indiana Utility Regulatory Commission (IURC) to consider in the rate base of a public utility that complies with certain renewable energy standards (RES) any capital expenditures made by the public utility to extend gas or electric service to a customer that produces biofuels or is a renewable energy manufacturing facility. It requires the IURC to provide certain financial incentives for implementing electric line facilities projects to electricity suppliers that comply with a certain RES. It also allows a public utility that proposes to take, acquire, condemn, or appropriate land, real estate, or any interest in land or real estate for certain projects related to electric line facilities to obtain from the IURC a certificate of authority. The bill requires the IURC to hold a public hearing and to find that the public utility has demonstrated certain elements, and to encourage investment in electric line facilities by creating financial incentives that the IURC finds to be reasonable and necessary. This bill modifies common law to provide that the owner of land against which eminent domain is initiated may object to the public purpose and necessity of the project only if the condemnor has not been issued a certificate of authority.

The bill provides that: (1) low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facilities; and (2) purchases of energy produced by such facilities; qualify for the financial incentives available for clean coal and energy projects. It provides that an eligible business may recover qualified utility system expenses, which include specified preconstruction costs, associated with a: (1) new energy production or generating facility; or (2) low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility. It amends definition of alternative energy projects to conform with definition of renewable energy resources.

This bill requires electricity suppliers to comply with an RES by specified dates. It provides that an electricity supplier that does not comply with a higher RES is not eligible for certain financial incentives related to renewable energy development. It requires the IURC to allow the recovery of reasonable and

necessary costs incurred by an energy utility in connection with a green infrastructure project that provides electric, steam, or gas service to or receives electric, steam, or gas service from an alternate energy production facility, a renewable energy manufacturing facility, or renewable resources. The bill provides that an energy utility may implement a rate adjustment if the IURC fails to act on an application.

This bill requires an investor owned electric utility to offer net metering to certain customers that generate electricity from renewable energy resources. It establishes a billing method for net metering customers. It voids conflicting administrative rules.

This bill establishes the Office of Alternative Energy Incentives within the Office of Energy Development to administer a program to provide incentives for Rural Electric Membership Corporations (REMCs) and their cooperatively owned power suppliers to develop alternative energy projects. It provides that: (1) the director of the Office of Energy Development; or (2) the designee of the director of the Office of Energy Development; shall serve as the office's director. It allows two or more corporations that are members of the same cooperatively owned power supplier to develop alternative energy projects jointly. It gives the office authority to adopt rules to implement the program. The bill provides that a corporation shall have access to federal economic stimulus funds: (1) for the same uses; and (2) in accordance with the same processes; as any other energy utility may have access to or use federal economic stimulus money.

Effective Date: (Amended) Upon passage; July 1, 2009.

Explanation of State Expenditures: (Revised) *Office of Alternative Energy Incentives(OAEI)*: This bill establishes the OAEI within the Office of Energy Development (OED) to provide assistance to REMCs in the development of alternative energy projects. This bill would increase administrative expenditures for the OED. The bill does not contain an appropriation.

(Revised) *Indiana Utility Regulatory Commission (IURC)*: This bill will increase administrative expenditures of the IURC by requiring the IURC to evaluate applications to determine eligibility for financial incentives. The bill also requires the IURC to conduct public hearings related to issuance of a certificate of authority for certain projects by a public utility. The bill provides that an application is considered approved after 120 days if the IURC fails to make a decision.

Any increase in expenditures could be offset to the extent that the IURC imposes a monetary penalty on an electricity supplier for noncompliance with the RES established in the bill. The bill provides for a penalty equal to the product of the number of megawatt hours of electricity that the electricity supplier was required to, but failed to, supply, multiplied by \$25.

(Revised) *State and Local Utility Expenditures*: The bill includes state and local governments in the class of electricity consumers which must be offered net metering services. Under current IURC rules (170 IAC 4-4.2) investor-owned electric utilities (IOEU) must offer net metering to residential customers and K-12 schools that install a net metering facility. Currently, IOEUs may, but are not required, to offer net metering to state and local governments. The bill would require all electric utilities to offer net metering to state and local governments, as well as other customer classes as listed in the bill.

To the extent that any governmental entity chooses to utilize net metering, there could be a decrease in that entity's electric utility expenditures. The net impact will ultimately depend on the amount of revenue the state or local agency can generate through the sale of renewable energy back to an electric utility versus the rate increases charged by the utility due to cost recovery provisions (See *Utility Rates* section under Explanation

of State Revenues)

Explanation of State Revenues: (Revised) *Utility Rates* - It is estimated that utility rates could increase under the bill due to the provision allowing for reasonable and necessary cost recovery for the following;

- preconstruction costs associated with a new energy production or generating facility or a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility.
- purchase of energy, capacity, or renewable energy credits by electricity suppliers to comply with the renewable energy standards established in the bill
- green infrastructure projects that provide electric, steam, or gas service to an alternate energy production facility.

To the extent that any of the provisions of this bill increase utility rates, there could be an increase in Utility Receipts Tax (URT), Utility Services Use Tax (USUT), and Sales Tax collections. The amount of any increase is indeterminable and will depend on rate adjustments allowed by the IURC for cost recovery.

Taxes: The rate for both the URT and USUT is 1.4%. The URT is calculated on the gross receipts of all entities providing the retail sale of utility services in Indiana. The USUT is imposed on the retail consumption of utility services in Indiana. Both the URT and USUT are deposited in the state General Fund.

Sales Tax revenue is deposited in the state General Fund (99.178%), the Public Mass Transportation Fund (0.670%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%)

(Revised) *Background Information on Renewable Energy Standard-* This bill establishes an incentive program to allow a public utility that complies with certain renewable energy standards to recover reasonable and necessary costs associated with any capital expenditures made by the public utility.

In order to qualify for a financial incentive, an electricity supplier must supply electricity that is generated from renewable energy resources to Indiana customers as a percentage of the total electricity supplied by the electricity supplier to Indiana customers during a calendar year. The bill specifically lists energy that is defined as renewable energy. The bill provides that an electricity supplier who elects to comply with *Schedule 1* is eligible for financial incentives:

Schedule 1 -

- (1) Not later than the CY ending December 31, 2010, at least 3%.
- (2) Not later than the CY ending December 31, 2015, at least 6%.
- (3) Not later than the CY ending December 31, 2020, at least 10%.
- (4) Not later than the CY ending December 31, 2025, at least 15%.

If the electricity supplier fails to comply with *Schedule 1*, the electricity supplier is no longer eligible for financial incentives and must comply with the schedule set forth in *Schedule 2* beginning in the compliance year in which the electricity supplier failed to comply with the schedule set forth in *Schedule 1*. The IURC would impose a reasonable monetary penalty on the electricity supplier for noncompliance with this provision.

Schedule 2 -

- (1) Not later than the CY ending December 31, 2010, at least 1.5%.
- (2) Not later than the CY ending December 31, 2015, at least 4%.
- (3) Not later than the CY ending December 31, 2020, at least 7%.

(4) Not later than the CY ending December 31, 2025, at least 10%.

If an electricity supplier exceeds the applicable percentage in a compliance year, the electricity supplier may carry forward the amount of electricity that exceeds the applicable percentage and is generated from renewable energy resources in an Indiana facility to comply with the requirement in either or both of the two immediately succeeding compliance years.

The bill provides that the IURC may not approve a financial incentive for a particular electricity supplier if the IURC has approved a financial incentive in the preceding 12 months for that electricity supplier, unless the IURC determines that approving a particular financial incentive on a more timely basis will benefit the electricity supplier's ratepayers.

(Revised) *Background Information on Net Metering*: As used in this bill, “net metering” means the measurement of the difference between the electricity that an investor-owned electric utility supplies to an eligible net metering customer and the electricity that an eligible net metering customer supplies back to the investor-owned electric utility.

As used in this bill, “eligible net metering customer” means a customer in good standing that owns and operates a net metering facility that has a nameplate capacity less than or equal to 100 kilowatts.

As used in this bill, “net metering facility” means an arrangement of equipment that is:

1. used for the production of electricity from a renewable energy resource (as defined in IC 8-1-8.8-10);
2. owned and operated by an eligible net metering customer;
3. located on the eligible net metering customer’s premises; and
4. used primarily to offset all or part of the eligible net metering customer’s own electricity requirements.

(Revised) *Background Information on the Green Infrastructure Incentive Program*: This bill establishes a program to encourage green infrastructure projects by allowing the timely recovery of costs incurred by an energy utility in connection with a green infrastructure project. As used in this bill, “green infrastructure project” means the construction, addition, extension, or improvement of an energy utility's plant or equipment to provide electric, steam, or gas service to or receive electric, steam, or gas service from an alternate energy production facility or a renewable energy resource (as defined in IC 8-1-8.8-10).

As used in this bill, “energy utility” has the meaning set forth in IC 8-1-2.5-2 and is defined as a public utility or a municipally owned utility within the meaning of IC 8-1-2-1, or a local district corporation or a general district corporation within the meaning of IC 8-1-13-23, engaged in the production, transmission, delivery, or furnishing of heat, light, or power.

Explanation of Local Expenditures: See *State and Local Utility Expenditures section* under Explanation of State Expenditures.

Explanation of Local Revenues:

State Agencies Affected: IURC; All

Local Agencies Affected: All.

Information Sources:

Fiscal Analyst: Diana Agidi,317-232-9867.